living adjustment of 2.8% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is based on the change in the Consumer Price Index from October, 1994, to October, 1995.

**EFFECTIVE DATE:** January 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, or Tanya Sandros, Copyright Arbitration Royalty Panel Specialist, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** On December 22, 1992, the Copyright Royalty Tribunal published in the Federal Register final rules governing the terms and rates of copyright royalty payments with respect to certain uses by noncommercial educational broadcast stations of published nondramatic musical works and published pictorial, graphic and sculptural works. 57 FR 60957 (December 22, 1992). The Copyright Royalty Tribunal determined in that proceeding that colleges, universities, and other noneducational institutions which are not affiliated with National Public Radio would pay a royalty rate adjusted each year according to changes in the Consumer Price Index for the use of copyrighted published nondramatic musical compositions. 37 CFR 304.10. Accordingly, the Tribunal published a cost of living adjustment on December 1, 1993. 58 FR 63294 (December 1, 1993).

On December 17, 1993, Congress abolished the Copyright Royalty Tribunal. Copyright Royalty Tribunal Reform Act of 1993 (CRT Reform Act), Public Law 103–198, 107 Stat. 2304. The CRT Reform Act directed the Library of Congress and the Copyright Office to adopt the rules and regulations of the CRT as found in 37 CFR Chapter III. 17 U.S.C. 802(d). The Office subsequently reissued the CRT regulations on December 22, 1993. 58 FR 67690 (December 22, 1993).

In a later action, former 37 CFR 304.10, which calls for the annual cost of living adjustments to rates paid by college and university radio stations, was renumbered 37 CFR 253.10. 59 FR 23964 (May 9, 1994).

Accordingly, the Copyright Office of the Library of Congress is hereby performing the annual cost of living adjustment pursuant to the 1992 public broadcasting rate adjustment proceeding.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 1994, to the most recent Index published before December 1, 1995, was 2.8% (1994's figure was 149.5; 1995's figure was 153.7, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is $211 each and $49 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

## PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

**§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $211 annually.

(2) For all such compositions in the repertory of BMI, $211 annually.

(3) For all such compositions in the repertory of SESAC, $49 annually.

* * * * *

Dated: November 21, 1995.

Marybeth Peters,

*Register of Copyrights.*

[FR Doc. 95–29145 Filed 11–30–95; 8:45 am]

**BILLING CODE 1410–33–P**

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## 37 CFR Part 255

**[Docket No. RM 95–4 CARP]**

## Digital Performance Right in Sound Recordings

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Initiation of voluntary negotiation period and final rule.

**SUMMARY:** The Copyright Office is initiating the six month voluntary negotiation period for negotiating terms and rates for a compulsory license for digital subscription transmissions, and adopting the rate for a compulsory license for digital phonorecord delivery as required by the Digital Performance Right in Sound Recordings Act of 1995.

**DATES:** The effective date of this document is December 1, 1995. The initiation of the six month voluntary negotiation period is December 1, 1995. The effective date of the rate for digital phonorecord deliveries is February 1, 1996.

**ADDRESSES:** Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, they should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E. Washington, D.C. 20540.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024, (202) 707–8380.

**SUPPLEMENTARY INFORMATION:** On November 1, 1995, the President signed into law the ''Digital Performance Right in Sound Recordings Act of 1995'' (''Digital Performance Act''), Pub. L. 104–39. The Digital Performance Act creates an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. *See* 17 U.S.C. 106(6).

Among the limitations on the performance of a sound recording publicly by means of a digital audio transmission is the creation of a new compulsory license for nonexempt subscription transmissions. The Digital Performance Act defines a ''subscription transmission'' as one that ''is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.'' 17 U.S.C. 114(j)(8). All nonexempt subscription transmissions are eligible for section 114 compulsory licensing provided they are not made by an ''interactive service,'' which is defined in part as ''one that enables a member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient.'' *See* 17 U.S.C. 114(j)(4).

The terms and rates of the section 114 statutory license are determined by voluntary negotiation among the affected parties and, where necessary, compulsory arbitration conducted under chapter 8 of the Copyright Act. The voluntary negotiation period was triggered on enactment of the Digital Performance Act, which directs the Librarian of Congress, within 30 days of enactment, to publish in the Federal Register a notice initiating ''voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments * * *'' 17 U.S.C. 114(f)(1). The voluntary negotiation period is to last for six months, and any terms and rates negotiated during the period are to be effective from February 1, 1996, the effective date of the Digital Performance Act,[1] through December 31, 2000. The Digital Performance Act requires that the terms and rates should be established separately for each different type of digital audio transmission service then in operation, but does not require or suggest that the terms and rates established must be different. The negotiations between copyright owners of sound recordings and the entities performing such recordings under the § 114 license are to be governed by the provisions of section 114(e) (which grants the negotiating parties an antitrust exemption), and each party is responsible for bearing its own costs.

In the legislative history to the Digital Performance Act, the Committee expressed hope that the voluntary negotiation period will lead to an industry-wide agreement concerning royalty terms and rates. S. Rep. No. 128, 104th Cong., 1st Sess. 29 (1995). If an agreement as to rates and terms is reached and there is no further controversy, then it is not necessary for the parties to submit to arbitration. In such cases, the Librarian of Congress will follow current rate regulation procedures and notify the public of the proposed agreement in a notice and comment proceeding and, if no opposing comment is received from a party with a substantial interest and intent to participate in an arbitration proceeding, the Librarian will adopt the terms and rates embodied in the agreement without convening a copyright arbitration royalty panel. 37 CFR 251.63(b). If, however, no industry-wide agreement is reached, or only certain parties negotiate license agreements, then those copyright owners and entities performing sound recordings not subject to a voluntary agreement shall be bound by the terms and rates set by a CARP. Arbitration proceedings are initiated upon the filing of a petition for ratemaking with the Librarian of Congress during the 60 days immediately following the six month voluntary negotiation period. Arbitration cannot take place without the filing of a petition even if no voluntary license agreements are negotiated.

Initiation of Voluntary Negotiations

Pursuant to 17 U.S.C. 114(f)(1), the Copyright Office of the Library of Congress is initiating the six month voluntary negotiation period for sound recording copyright owners and entities that perform or authorize the performance of sound recordings by means of nonexempt digital subscription transmissions. The negotiation period is to run from December 1, 1995 to June 1, 1996. Parties which negotiate a voluntary license agreement during this period are encouraged to submit two copies of the agreement to the Copyright Office at the above listed address within 30 days of its execution.

Petitions

Pursuant to 17 U.S.C. 114(f)(2), those sound recording copyright owners and entities that perform or authorize the performance of sound recordings by means of nonexempt digital transmissions and who have not negotiated license agreements under section 114(f)(1) are subject to arbitration upon the filing of a petition. Only those parties with a significant interest in the establishment of terms and rates for the section 114 license may file a petition. Petitions must be submitted in accordance with 17 U.S.C. 803(a)(1), and may be filed at any time during the period commencing on June 2, 1996, and ending on August 1, 1996. Petitions should be submitted to the Copyright Office at the address listed in this notice. The petitioner must deliver an original and five copies of the petition to the Office.

If all the affected parties negotiate a single industry-wide agreement during the period described in section 114(f)(1), they must petition the Librarian of Congress for acceptance of the agreement during the same 60 day period. The Librarian will then follow the notice and comment procedures of 37 CFR 251.63(b). If a party with a significant interest and an intent to participate in an arbitration proceeding files an objection to the agreement during the notice and comment proceeding, then the Librarian shall initiate an arbitration proceeding in accordance with chapter 8 of the Copyright Act and 37 CFR 251 part.

Digital Phonorecord Delivery

The Digital Performance Act also provides that the section 115 compulsory license to make and distribute phonorecord includes the right of the compulsory licensee to make or authorize digital phonorecord deliveries. The Act identifies that the rate for all digital phonorecord deliveries made or authorized under a compulsory license on or before December 31, 1997, shall be the same as the rate in effect for the making and distribution of a physical phonorecord. [2] As a result, the Office is amending part 255 of its rules to reflect the new royalty rate for digital phonorecord deliveries, and to adopt the same definition of digital phonorecord delivery as appears in the Digital Performance Act. The effective date of the rule change is February 1, 1996, the date on which the Digital Performance Act takes effect.

Good Cause Finding

Section 553(b)(3)(B) states that notice of a proposed rulemaking is not required ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

Because the Digital Performance Act requires that the new rate for digital phonorecord deliveries is to be the same as for the making and distribution of physical phonorecords until December 31, 1997, the Office is without any discretion in the matter. Therefore, it would be impracticable, unnecessary, and contrary to the public interest to solicit comments on a rule that is mandated by law.

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 255 as follows:

## PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

[1] The effective date of the Digital Performance Act is February 1, 1996, with the exception of sections 114 (e) and (f) of the law, which became effective upon date of enactment.

[2] After December 31, 1997, the rate for digital phonorecord deliveries could be the same or different than the rate for making and distributing a physical phonorecord, depending on the outcome of negotiations or CARP proceedings scheduled to take place that year.

Authority: 17 U.S.C. 801(b)(1) and 803.

2. Section 255.1 is revised to read as follows:

**§ 255.1 General.**

This part 255 adjusts the rates of royalties payable under the compulsory license for making and distributing phonorecords, including digital phonorecord deliveries, embodying nondramatic musical works, under 17 U.S.C. 115.

3. A new § 255.4 is added to read as follows:

**§ 255.4 Definition of digital phonorecord delivery.**

A ''digital phonorecord delivery'' is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

4. A new § 255.5 is added to read as follows:

**§ 255.5 Royalty rate for digital phonorecord deliveries.**

For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

Dated: November 24, 1995.

Marilyn Kretsinger,

*Acting General Counsel.*

Approved:

James H. Billington,

*The Librarian of Congress.*

[FR Doc. 95–29146 Filed 11–30–95; 8:45 am]

BILLING CODE 1410–33–P

## 37 CFR Part 259

**[Docket No. 94–3 CARP]**

## Representation for Claiming DART Royalties in Musical Works

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Amendment of regulation and policy statement.

**SUMMARY:** The Copyright Office currently requires a performing rights organization to have separate, specific and written authorization from its members or affiliates in order to file a claim on behalf of its members for DART royalties in the Musical Works Fund. The performing rights organization had sought reconsideration of this rule. This document establishes that the Office retains this practice, but amends the rule and applies the requirement to all organizations and associations that act as common agents for the purposes of filing claims, negotiating settlements and receiving digital royalties on behalf of their members or affiliates. Under this amended rule, organizations and associations that act only as common agents must specify in their claim how the parties entitled to receive royalties, i.e., their members or affiliates, fit the definition of interested copyright party under the Act.

**EFFECTIVE DATE:** January 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, or Tanya Sandros, CARP Specialist. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:**

I. Background

On October 28, 1992, Congress enacted the Audio Home Recording Act (AHRA). This Act requires manufacturers and importers to pay royalties on digital audio recording devices and media (DART) that are distributed in the United States. The royalties are deposited with the Copyright Office and distributed in one of two ways. Parties may negotiate settlements among themselves; or if they cannot settle, a Copyright Arbitration Royalty Panel (CARP), convened by the Copyright Office (hereafter ''Office''), and the Librarian of Congress, allocates royalty payments among the joint and individual claimants.

To qualify for DART royalties, interested copyright parties entitled to receive funds under section 1006 must file a claim in January or February of each calendar year for royalties collected during the preceding year. 17 U.S.C. 1006(a)(2), 1007(a)(1). The DART royalties are divided into two funds—the Sound Recording Fund, which accounts for 66⅔% of the royalties, and the Musical Works Fund, which accounts for the remaining 33⅓% of the royalties.

The Copyright Royalty Tribunal (CRT) had the original authority to promulgate the rules and regulations to administer the AHRA. Shortly after the October 28, 1992, enactment of the AHRA, the CRT faced the issue of defining the extent of proof required of a performing rights organization to demonstrate that it had the proper authorization to represent its members or affiliates before the CRT in a DART proceeding. The CRT invited public comment in an Advance Notice of Rulemaking. 57 FR 54542 (November 19, 1992). On January 29, 1993, the CRT adopted a rebuttable presumption that performing rights organizations represented their respective members or affiliates in royalty proceedings for the 1992 fund. 58 FR 6441, 6444 (January 29, 1993). The interim regulations also directed the parties to file a report, by June 1, 1993, on this issue. Subsequently, on October 18, 1993, the CRT published final regulations which required performing rights organizations to obtain separate, specific, written authorization from its members. 58 FR 53822 (October 18, 1993); 37 CFR 259.2 (formerly 37 CFR 311.2).

On November 3, 1993, the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) filed with the CRT a petition to reopen for reconsideration the rulemaking proceeding that resulted in the CRT's final rule. On December 3, 1993, the CRT officially held the petition in abeyance. Order, dated December 3, 1993, In the Matter of Digital Recording Technology Act; Implementation, CRT Docket No. 92–3 DART.

Shortly thereafter, on December 17, 1993, the President signed the Copyright Royalty Tribunal Reform Act of 1993, Public Law 103–198, 107 Stat. 2304, thereby eliminating the CRT and replacing it with a system of ad hoc Copyright Arbitration Royalty Panels administered by the Librarian of Congress and the Copyright Office. The new Act directed the Librarian of Congress to convene CARPs to adjust rates and distribute royalties, *see* 17 U.S.C. 111, 115, 116, 118, 119 and Chapter 10, and to immediately adopt the rules and regulations of the former CRT. In response to these directions, the Copyright Office issued a notice adopting the full text of the rules and regulations of the former CRT on an